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**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 29/Lab./AIL/T/2020,
Puducherry, dated 26th February 2020)

NOTIFICATION

Whereas, an Award in Lok Adalat Case No. 21751/2019 in I.D (L) No.14/2017, dated 14-12-2019 of the Lok Adalat, Puducherry, in respect of the Industrial Dispute between the management of M/s. Jayaprakash Narayanan Co-operative Spinning Mill, Karaikal and Thiru G. Anandaraman and 12 others, over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms.No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

S. MOUTTOULINGAM,
Under Secretary to Government (Labour).

BEFORE THE LOK ADALAT AT PUDUCHERRY

Organised by Ms. V. Sofana Devi (District Judge) Member-Secretary, State Legal Services Authority, Puducherry, under section 19 of the Legal Services Authorities Act (Act 39 of 1987).

Thiru V. Jaikumar, . . Judge
Special Officer-*cum*-
Additional Sub-Judge,
Puducherry.

Ms. S. Mumtaj, . . Judge
I Additional District Munsif,
Puducherry.

Thiru Shanmugham, . . Member
Advocate.

LOK ADALAT CASE No. 21751/2019
in

I.D. (L) No. 14/2017

(On the file of the Industrial Tribunal-*cum*-
Labour Court, Puducherry)

Saturday, the 14th day of September 2019

Thiruvallargal :

1. G Anandaraman
2. S. Vasudevan

Thiruvallargal :

3. P. Sakthivel
4. V. R. Ganesan
5. P. Darmadourai
6. S. Saminathan
7. S. Suresh
8. J. Beemaroo
9. S. Murugavel
10. Y. Yudhi Francis
11. P. Aravamutham
12. P. Selvamani
13. K. Thennarasu

. . Petitioners

Vs.

The Managing Director,
M/s. Jayaprakash Narayanan
Co-operative Spinning Mill,
Keezhamani, Meladuthurai,
Neravy, Karaikal.

. . Respondent

This case coming on this day before us in the presence of the petitioner and his Counsel Thiru S. Suriamoorthy and the respondent and his Counsel Thiru P. Djeassillane, having agreed to settle the matter and thereby the case being settled under Joint Compromise Memo filed, an Award is passed accordingly:

*Taken cognizance under section 20 (1) of the Legal
Services Authorities Act (Act 39/87)*

1. This case which was filed and pending before the Presiding Officer as I.D. (L) No. 14/2017 was transferred to the Lok Adalat and was taken on file for settlement.

2. The petitioner has filed this case to pass an Award to hold that the non-employment of the petitioner/workman by the respondent/management is not justified and for other monetary benefit if any.

3. Both parties were served with notice and appeared before the Lok Adalat and the petitioner and the respondent jointly filed a compromise memo stating that:

(i) Out of the petitioners numbering 13 mentioned in the Reference on G.O. Rt. No. 36/AIL/Lab./T/2017, dated 05-04-2017, the following petitioners (only) came forward for the settlement. It is therefore, decided by both the parties that Memorandum of the Settlement shall be filed before this Hon'ble Court (only) in respect of such of the petitioners who came forward for the settlement and presented themselves before this Lok Adalat.

Thiruvallargal :

1. G Anandaraman (Petitioner 1)
2. S. Vasudevan (Petitioner 2)
3. V.R. Ganesan (Petitioner 4)
4. P. Darmadourai (Petitioner 5)
5. S. Saminathan (Petitioner 6)
6. S. Suresh (Petitioner 7)
7. J. Beemaroo (Petitioner 8)
8. S. Murugavel (Petitioner 9)
9. K. Thennarasu (Petitioner 13)
10. P. Selvamani (Petitioner 12)

(ii) the respondent/management will reinstate the above-mentioned petitioner into the services of the Mill with immediate effect.

(iii) the above-mentioned petitioners/workmen will not claim any back wages for the period from the date of termination, till the date of reinstatement.

(iv) the respondent management will reinstate the above-mentioned petitioner/workman with continuity of service.

(v) the above-mentioned petitioners/workmen will not claim any monetary/service benefit for the period from the date of termination till the date of reinstatement.

(vi) the respondent/management shall arrange to relieve the above-mentioned petitioners/workmen from the services of the Mills under the Special Voluntary Retirement Scheme, which is in vogue/force in the Mills, without any other conditions if, the above petitioners/workmen submit application under the scheme within a period of one month from the date of reinstatement.

On failing the abovesaid conditions this reference will be reopened for further proceedings.

4. The Compromise Memo filed by the parties is *bona fide* and there is no reason why the same should not be considered and recorded. There is no inducement or other indication for the said compromise. Accordingly, the Joint Compromise Memo filed by the parties is recorded and an Award is passed under the terms and conditions therein.

5. This case is referred to the Lok Adalat organized by the State Legal Services Authority under section 19 of the Legal Services Authorities Act (Act 39/87) and after full and frank discussion of all issues, an Award is passed as follows.

AWARD

1. It is ordered and decreed that the Award is passed in terms of the Joint Compromise Memo made by the parties and that the reference made by the Government on G.O. Rt. No. 36/AIL/Lab./T/2017, dated 05-04-2017 and the same is hereby closed.

2. It is ordered and decreed that the Joint Compromise Memo signed by the both parties shall form part and parcel of the Award.

3. That this Award of the Lok Adalat shall be deemed to be a decree of the Civil Court as per section 21 of the Legal Services Authorities Act, 1987.

Dated at Puducherry, on this the 14th day of September, 2019.

V. JAIKUMAR,
Judge.

S. MUMTAJ,
Judge.

SHANMUGAM,
Advocate, Member.

**BEFORE THE HON'BLE INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PUDUCHERRY**

I.D. (L) 14/2017

Thiruvallargal :

1. G Anandaraman
2. S. Vasudevan
3. P. Sakthivel
4. V. R. Ganesan
5. P. Darmadourai
6. S. Saminathan
7. S. Suresh
8. J. Beemaroo
9. S. Murugavel
10. Y. Yudhi Francis
11. P. Aravamutham
12. P. Selvamani
13. K. Thennarasu

. . Petitioners

Vs.

The Managing Director,
M/s. Jayaprakash Narayanan
Co-operative Spinning Mill,
Keezhamani, Meladuthurai,
Neravy, Karaikal-609 609.

. . Respondent

MEMORANDUM OF SETTLEMENT FILED BY BOTH THE PARTIES

It is submitted before this Hon'ble Court by both the parties that out of the petitioners numbering 13 mentioned in the Cause Title (Reference), the following petitioners only came forward for the settlement. It is therefore, decided by both the parties that memorandum of the settlement shall be filed before this Hon'ble Court only in respect of such of the petitioners who came forward for the settlement and presented themselves before this Lok Adalat.

Thiruvallargal :

1. G Anandaraman (Petitioner 1)
2. S. Vasudevan (Petitioner 2)
3. V.R. Ganesan (Petitioner 4)
4. P. Darmadourai (Petitioner 5)
5. S. Saminathan (Petitioner 6)
6. S. Suresh (Petitioner 7)
7. J. Beemaroo (Petitioner 8)
8. S. Murugavel (Petitioner 9)
9. K. Thennarasu (Petitioner 13)
10. P. Selvamani (Petitioner 12)

It is further submitted before this Hon'ble Court that in the above Industrial Dispute, the above-mentioned Petitioners and the Respondent are mutually willing to settle the issues as follows:

1. The respondent/management will reinstate the petitioner into the services of the Mill with immediate effect.

2. The above-mention petitioners/workmen will not claim any back wages for the period from the date of termination, till the date of reinstatement.

3. The respondent management will reinstate the above-mention petitioners/workmen with continuity of service.

4. The above-mention petitioners/workmen will not claim any monetary/service benefit for the period from the date of termination till the date of reinstatement.

5. The respondent/management shall arrange to relieve the above-mention petitioners/workmen from the services of the Mills under the Special Voluntary Retirement Scheme, which is in vogue/force in the Mills, without any other conditions if the above-mention petitioners/workmen submits application under the Scheme within a period of one month from the date of reinstatement.

Both parties pray this Hon'ble Court to approve the above proposed Settlement and pass order and Award accordingly.

Dated at Puducherry on this 14th day of December 2019.

S. SURIAMOORTHY,
Counsel of Petitioner.

P. DJEASSILLANE.
Counsel of Respondent.

SARISHTADAR
Labour Court
Puducherry

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 30/AIL/Lab./T/2020,
Puducherry, dated 27th February 2020)

NOTIFICATION

Whereas, an Award in I.D. (T) No. 28/2016, dated 09-12-2019 of the Industrial Tribunal-cum-Labour Court, Puducherry, in respect of the Industrial Dispute between the management of M/s. MRF Limited, Nettapakkam Commune, Puducherry and Thiru Muthukumarasamy, Mudaliarpur, Puducherry, over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-05-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

S. MOUTTOULINGAM,
Under Secretary to Government (Labour).

BEFORE THE INDUSTRIAL TRIBUNAL AT
PUDUCHERRY

Present : Thiru V. PANDIARAJ, B.Sc., LL.M.,
Presiding Officer.

Monday, the 9th day of December 2019.

I.D. (L) No. 28/2016

Thiru Muthukumarasamy,
No. 18, Anitha Nagar,
4th Cross Street,
Mudaliarpur, Puducherry.

... Petitioner

Versus

The Managing Director,
M/s. M.R.F. Limited, Eripakkam,
Nettapakkam Commune,
Puducherry.

.. Respondent

This Industrial Dispute coming on 09-12-2019 before me for final hearing in the presence of Thiru M. Subramanian, Counsel for the petitioner and Thiru L. Swaminathan, Counsel for the respondent, upon hearing, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This Industrial Dispute has been referred by the Government of Puducherry as per the G.O. Rt. No. 113/AIL/Lab./T/2016, dated 05-12-2016 for adjudicating the following:

(a) Whether the dispute raised by the petitioner Thiru A. Muthukumarasamy against the management of M/s. M.R.F. Limited, Puducherry, over non-employment is justified or not? If justified, what relief he is entitled to?

(b) To compute the relief if any, awarded in terms of money if, it can be so computed?

2. *The brief averment of the petition filed by the petitioner:-*

(i) The petitioner was employed in the respondent company on 12-03-1999 and he has more than 16 years service in the respondent company, and his Emp. No. 600132. He worked as a Mechanic in Extruder section. The respondent management has more than 1500 employees in various sections. This petitioner acted as Vice President in INTUC and he had played an important role in the talk between management and the employees, as a representative of the Union and therefore, occasionally he had controversial term with the management. Due to that the management has issue charge memo, dated 28-04-2014 with vague and false allegations, though he has no way connected with that charges. This petitioner has given his reply on 30-04-2014 with detailed explanations. After that the management has fixed the enquiry date of Disciplinary proceedings on 09-05-2014. This petitioner-participated in the Disciplinary proceedings and he has enlightened his defence also and he has also brought out the truth before the Enquiry Officer. This petitioner has made a request on 20-05-2014, to permit him to contest his Disciplinary proceedings through his Advocate. Further, he has requested the Enquiry Officer to supply the copy of the complaint,

who has lodged a complaint against this petitioner. The Enquiry Officer failed to comply the same and he did not permit him to have his own Advocate to defend his case. The Enquiry Officer has not permitted this petitioner to plead his case and he has not permitted this petitioner to cross-examine the management side witnesses by name Kalaiselvan and Franklin. The Enquiry Officer by name Rajadurai, B.A., B.L., and the respondent side representative by name K. Babu, B.A., B.L., have good knowledge about the provisions of Laws of the Labour Legislations. Usually they would act in favour of the management always and they would conclude the Disciplinary proceedings in favour of the management only. Hence, as a routine manner, the Enquiry Officer without considering the contradictions in the evidences and the charge memo, they had concluded the Disciplinary proceedings in favour of the management and they have failed to find out the truth and they have conducted the Disciplinary proceedings without following the principles of natural justice. The evidences of the representatives of the management by name, Kalaiselvan and Franklin were accepted and acted upon by the Enquiry Officer without analyzing the truth in their evidence. The Enquiry Officer has completed his Disciplinary proceedings in a biased manner and concluded the Disciplinary proceedings in favour of the respondent management, in violation of natural principles of justice and hence, the subsequent termination order becomes invalid one. Thereafter, this petitioner approached the Conciliation Officer and the respondent management failed to cooperate for the conciliation proceedings, which resulted in failure of the conciliation proceedings. This petitioner was entitled for reinstatement with all his back wages and monetary benefits and hence, this industrial dispute has to be allowed.

3. *The brief averment of the counter filed by the respondent:-*

(i) The allegations made by the petitioner against the respondent were denied as false in total. This petition was filed with suppression of material facts and this petition has to strictly prove the allegations against this respondent management with sufficient evidences. The show cause notice was issued by the respondent management as the petitioner has committed misconduct which attracts clause 25.4, clause 25.49 and clause 25.71 of the Certified Standing Orders of the respondent management. The petitioner has given cryptic and vague reply for the show cause notice, dated 28-04-2012. As the reply submitted by the petitioner

on 30-04-2014 was vague, the management has decided to have Disciplinary proceedings by appointing an Advocate/Enquiry Officer. The petitioner has falsely alleged that the management has targeted the petitioner. The enquiry was fixed on 09-05-2014 and it was intimated to the petitioner. That the petitioner has denied the charges levelled against him. This petitioner has also participated in the Disciplinary proceedings and therefore, it was adjourned to 09-05-2014. On that day also the petitioner has submitted a letter to the Enquiry Officer requesting him to have one Mr. R. Jayakumar as an assistant to him to assist the Disciplinary proceedings on behalf of him and it was also permitted by the Enquiry Officer. But, in contrary to the above, with venomous reasons this petitioner had stated that he has sought for assistance of an Advocate. Even then the written argument filed on 01-07-2014 also, there is no whisper about the said letter, dated 20-05-2014. This petitioner has participated in the Disciplinary proceedings, wholeheartedly, and he did not allege any such bias in the conduct of Enquiry Officer, at the time of the argument. This case was filed as a result of after thought aimed to gain, misplaced sympathy from the Court. The respondent reserved his right to take up the preliminary issue as just and fair if warranted. The Enquiry Officer has concluded his enquiry and filed his report on 04-08-2014. The management was fully satisfied with the Enquiry Officer report and therefore, it has issued second show cause notice on 17-09-2014, and for which this petitioner has given his reply on 04-10-2014, wherein, also this petitioner has raised false and vague allegations against the conduct of the Enquiry Officer as against the Enquiry proceedings for the first time and he has requested for the reconsideration of the proposed punishment. After the consideration of the charges, enquiry report and the reply, the management has applied its mind on the charges of misconduct and explanation offered by the petitioner. The petitioner has concentration on making ridiculous/preposterous averments against the management. Already the respondent management has wasted considerable man hours in issuing warning letters, show cause notices and in conducting the enquiry proceedings. The management was not able to extend slightest sympathy also. Therefore, the petitioner was terminated from the service and hence, this petition has to be dismissed.

4. On the side of the petitioner only witnesses was examined and Ex.P1 to Ex.P7 was marked. On the side of the respondent three witnesses were examined and Ex.R1 to R29 were marked.

5. The petitioner side Counsel argued that the management was represented to its managing Director Mr. Govindarajan, who had filed the counter in this case, failed to appear before this Court and he has enter into box to adduce evidence on behalf of the management. It is argued that RW1 to RW3 examined on the side of the respondent side, but, they have not produced any authorization letter from the management and therefore, their evidence could not be taken into consideration for any purpose. It is further, argued that the documents marked on the side of the respondent were self attested by RW3 as he has no *locus standi* to file such self attested documents and hence, those documents cannot be taken into consideration under the provisions of Evidence Act. It is argued that the charges were vague and false and this petitioner has no way connected with them. It is further, argued that the charges levelled against the petitioner were not proved as required under the provisions of Industrial Disputes Act. It is argued by the petitioner Counsel that there was serious of lacunae and contradictions among the evidences of RW1 to RW3 and it was not sufficient enough to prove the charges. It is argued by the petitioner Counsel that RW1 has deposed that this petitioner was absent for 5 days as per Ex.R16 and for which also he has received a salary, whereas, RW2 has deposed that this petitioner was absent for 27 days and this petitioner has received a salary for the abovesaid 27 days. The petitioner's side Counsel argued that as per the charge-sheet, this petitioner was alleged as absentee for 32 days and he received the salary for 32 days by deceitful means. It is argued that the contradictions between the evidence of RW1 and RW2, the contradiction between the documents Ex.R16 and Ex.P1 were not considered by the Enquiry Officer. It is further argued that no other workmen were examined to prove the absence and receipt of salary by this petitioner for the abovesaid period of 32 days. The petitioner side Counsel argued that the management has failed to prove the aspect of compulsion made by this petitioner to the staff by name Mr. Allane and thereby he coerced the abovesaid Mr. Allane and get attendance in worksheet in SAP 6008. It is further argued that the non-examination of the Mr. Allane by the management, is a fatal to the case against the petitioner and the Enquiry Officer failed to consider all these aspects and he acted in a biased manner. The petitioner side Counsel argued that the apology letter alleged to have been given by Mr. Allane was marked as Ex.R9, which is nothing but, a created document for the purpose of victimization against the petitioner. The petitioner side Counsel argued that in case, if, this petitioner was absent for 32 days, definitely there may be some substituted workman, who may worked in the place of

this petitioner and he may also be get the salary for the abovesaid period. The details of the substituted service rendered by the other workman, the amount of the salary received by the substituted workman, were not at all produced before the Enquiry Officer and it was also not considered by the Enquiry Officer. It is argued that this petitioner has no possibility of making false entries in the worksheet in SAP 6008 which is under the supervision and control of the management staff. It is argued that the Enquiry Officer acted in a biased manner and he refused to give permission to this petitioner to have engagement of his Advocate, though the management has representation through its representative by name Mr. Rajadurai, who is a practitioner in law. It is further argued that the copy of the complaint was not served to this petitioner and this petitioner was denied to produce his evidences and records during his enquiry proceedings. It is further argued that the Enquiry Officer has acted in a biased manner and he has given his report in favour of the management as usual. It is further argued that the management has failed to take any legal action against the so called Mr. Allane and failed to recover the salary from the abovesaid Mr. Allane, would goes to shows that the allegations of mis-conduct is nothing, but, vague and false. It is argued by the petitioner Counsel that no two cards can be punched at a time in a punching machine and therefore, allegation of misuse of punching card by this petitioner and making of false entries by Mr. Allane, would nothing, but, a cooked up story to victimize this petitioner as he had played active role in the trade union activities. The petitioner side Counsel argued that the apology letter marked as Ex.R12, would goes to shows that this petitioner and the so called the Mr. Allane were friends from January 2014 alone and therefore, there is no chance for misuse of punching cards and there is no chance for making proxy entry in the SAP 6008 for the period from June 2013 to December 2013. In fine, the petitioner side Counsel argued that the management has failed to prove the charges against the petitioner and Enquiry Officer failed to consider the same and he acted in a biased manner and gave a report in favour of the management, which resulted in termination of this petitioner from the respondent company, and therefore, he is entitled for reinstatement with all other monetary benefits.

6. The respondent side Counsel argued that this petitioner along with one Mr. Allane cheated the company and they indulged in breach of trust and thereby they have made fraudulent entries in the SAP as well as the Punching machine and thereby they have received the salary for their absent period, which is a serious mis-conduct, which resulted in termination of

this petitioner. It is further argued by the respondent Counsel that the so called Mr. Allane has resigned his job from the company and he left out to abroad and therefore, there is no necessity for the respondent company to have legal action against the so called Mr. Allane and therefore, this petitioner cannot escape from the clutches of law under the pretext of no action against Mr. Allane. The respondent side Counsel argued that this petitioner was provided all the documents and the enquiry proceedings were conducted in a proper manner by adhering natural principles of justice. It is argued that there is no provision in Standing Orders of the company, to have engagement of Lawyer by the employee. It is argued that this petitioner has engaged the co-employee/trade union Secretary by name Jayakumar and he has fully utilized the abovesaid person throughout the enquiry proceedings. It is argued that totally three witnesses (MW1 to MW3) were examined on the side of the management and they were thoroughly cross-examined by this petitioner and this petitioner has not produced any witness on his side and endorsement in this aspect also made by this petitioner himself. It is argued that the allegation of denial of engagement of Advocate, non-supply of copy of the complaint are all nothing but, cooked up story. It is argued that this petitioner has not made any request in respect of copy of the complaint and engagement of Advocate to assist him before the Enquiry Officer. It is argued that this petitioner was placed in the Duplex 2 machine section and he has no connection with the salvage department, but, with his influence with Mr. Allane, he has made entries in the working sheet in SAP 6008 and in response he has made proxy entries for the abovesaid Mr. Allane on 09-04-2014 and 10-04-2014 by using Punching card on 09-04-2014 and 10-04-2014. In fine, respondent side Counsel argued that this petitioner indulged in misconduct of fraud and cheating and therefore, he has been terminated from his service after complying all the legal formalities and therefore, he prayed to dismiss the claim of this petitioner.

7. Points for consideration:

Whether, the management has adopted all the legal formalities during the disciplinary proceedings? and whether he was removed from his service in accordance with law? and whether this petitioner was entitle for reinstatement with all monetary benefits? are the points to be decided in this case.

8. On the Point:

The petitioner was an employee in the respondent company and he has been removed from his service by the management are all admitted facts. Whether,

the order of the removal/termination on the basis of the enquiry proceedings is justifiable or not is to be decided hereunder.

9. The first and foremost argument advanced by the petitioner Counsel is that the Enquiry Officer failed to adopt the natural principles of justice and he has acted in a perverted manner and therefore, the report of the Enquiry Officer has to be rejected in total. To find out the genuinity of the abovesaid argument, this Court inclined to go through the evidence adduced by the petitioner. This petitioner examined himself as PW1 in this case. In his chief examination, he has deposed that "the copy of the complaint against me was not served to me. I gave a request to the Enquiry Officer to furnish the copy of the complaint. Enquiry Officer failed to comply the same and failed to give suitable reply for the abovesaid request. I was denied to cross-examine Mr. Allane. I was denied to have engagement of an Advocate. The Enquiry Officer has not given, any reply to the request made to him regarding the assistance by Advocate. The Enquiry Officer failed to comply the natural principles of justice. The management failed to comply the clause/section 27.2.2 of the Standing Order. The Enquiry Officer failed to give the copy of the complaint, dated 23-04-2014 given by Mr. Kalaiselvan".

10. From and the abovesaid evidence, the petitioner side Counsel argued that there was some perversity in the nature of enquiry and the natural principles of justice was also not followed by the Enquiry Officer. At this juncture, this Court inclined to go through the evidence adduced by PW1 in his cross-examination. In his cross-examination he has deposed that "I was served with enquiry notice, dated 06-05-2014 (Ex.R1) and fully participated in the enquiry on 06-05-2014, the enquiry proceedings, dated 06-05-2014 was Ex.R2. The co-employee by name, Mr. Jayakumar (Joint Secretary) participated in the enquiry proceedings with me. I participated in the proceedings fully. I received a copy of the Enquiry proceedings by putting my signature, it was marked as Ex.R2. The co-employee by name Mr. Jayakumar was presented for my assistance. I cross-examined the witnesses. I received the Enquiry proceedings of the 3rd witness by name Franklin Vijay on the side of the management. I signed the Enquiry proceedings, dated 01-07-2014. I endorsed that no witness on my side, I filed the written argument. I have said nothing to say in the enquiry on the delinquent side. The co-employee Mr. Jayakumar also signed the same. I have also read and signed the same".

11. On perusal of the abovesaid cross-examination, it is found that this petitioner has fully and wholeheartedly participated in the enquiry proceedings

along with his assistance by name Mr. Jayakumar and he received the copies of all the proceedings and to that effect he and his co-employee by name, Mr. Jayakumar has signed the proceedings paper. All these facts would go to show that the Enquiry Officer has given proper opportunity to the petitioner and he was permitted to participate in the Enquiry proceedings with his Assistant by name, Mr. Jayakumar and he was also provided with all the documents marked during the Enquiry proceedings. It also shows that he was given opportunity to file his written argument and this petitioner has also filed the same before the Enquiry Officer. From these evidences and on analysis, this Court come to the conclusion that the natural principles of justice was followed and adopted by the Enquiry Officer during the enquiry proceedings.

12. At this juncture, the petitioner side Counsel argued that as per clause/section 27.2.2 of Standing Orders this petitioner has to be given permission to conduct his case through an Advocate. *Per contra*, the management side Counsel argued that as per the Standing Orders the delinquent cannot get Assistance of the Advocate and he can participate in the enquiry and he can cross-examine the witness either by himself or through his co-employee who assisted him. In support of his argument he has produced the copies of the Standing Order of the company section 27.2.2 of Standing Order runs as follows:

"At the enquiry, the workmen concerned shall be given a reasonable opportunity to defend himself *i.e.*, he will be given opportunity to examine himself and his witnesses and cross-examine the management's witness, he can produce any material evidence that may be relevant to the enquiry. If, the charged workman so desires in writing, he will be allowed in the conduct of the enquiry the Assistance of a co-workman or any Office Bearer of a trade union who is an employee of the establishment of which he is a member and the co-workman shall assist only in matters of clarification and to see that principles of natural justice are adhered to".

13. From and out of the abovesaid Standing Order, this Court come to the conclusion that the denial to the request made by the petitioner is a valid one and it is not against the Standing Order. At this juncture, the petitioner side Counsel filed a citation reported in 1988 (2) MLJ 389 wherein, the Hon'ble High Court has held that the denial of the request made by the delinquent to have engagement of Advocate will amount to denial of reasonable opportunity to defend himself and therefore, it would amount to violation of principles of natural justice. Here, in this case, this petitioner has

deposed that he has given a request on 20-05-2014, seeking Assistance by an Advocate to defend his case. But, he has not produced any such document showing his request made before the Enquiry Officer. Furthermore, as per clause 27.2.2 of Standing Order this petitioner has took the Assistance of one Jayakumar who is the Joint Secretary of the M.R.F. Employees union, and cross-examined all the three management side witnesses thoroughly with his Assistance. Therefore, this Court was unable to come to the conclusion that there was violation of natural principles of justice and therefore, the argument advanced on this score is rejected in total.

14. The petitioner has deposed that the copy of the complaint was not served to him, which is also against, the principles of natural justice. *Per contra*, the respondent side Counsel argued that the copy of the complaint was given to this petitioner at the time of enquiry proceedings. The so called copy of the complaints were marked as Ex.R15, 16 and R10 in this case. Further, the letter given by the so called Mr. Allane was also marked as Ex.R9 in this case. The enquiry report in this case was marked as Ex.R17. The Enquiry proceedings were marked as Ex.R2 in this case. The abovesaid complaints, dated 23-04-2014 by Mr. Franklin, complaint, dated 25-04-2014 by Mr. Senthil Kumar and complaint, dated 25-04-2014 given by Mr. Kalaiselvan were marked as Ex.MW13, 12 and 4 in the Enquiry proceedings. On perusal of Ex.R2, the Enquiry proceedings, the petitioner himself has admitted that he has perused the abovesaid copy of the complaints during his presence in the enquiry proceedings before the Enquiry Officer. Furthermore, endorsement in this regard was also made in the Enquiry proceedings, dated 27-04-2014, wherein, this petitioner and his Assistant Jayakumar also signed it. Therefore, it is clear that the non supply of copy of the documents was nothing but, an utter lie. Therefore, this Court come to the conclusion that there was no perversity or failure in adopting the principles of natural justice by the Enquiry Officer during the Enquiry proceedings. At this justice, this Court inclined to reproduce the verdict/findings/ observation made by the Hon'ble Supreme Court, in the citation reported in AIR 1996 SC 2474, in the case of

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“The fourth ground also thus disappears. Now, remains only the third ground *viz.*, the non-furnishing of the documents asked for by the respondent.

The Tribunal seems to be under the impression that the Enquiry Officer/Disciplinary Authority is bound to supply each and every document that may be asked for by the delinquent Officer/Employee. It is wrong there. Their duty is only to supply relevant documents and not each and every document asked for by the delinquent Officer/Employee”. Hence, as per the abovesaid findings/observations it is not relevant to supply the copies of all the documents unless it is relevant. Here, in this case also, the abovesaid citation was squarely applicable, as the petitioner has failed to show, how it is relevant. Hence, the abovesaid argument also goes out as per said citation.

15. The petitioner has deposed that the management side witness by name Senthilkumar has adduced evidence before the Enquiry Officer that this petitioner was absent for 5 days as detailed below:

July 2013	10 and 11
October 2013	21
December 2013	06 and 07
Total	5 days

16. Further he has deposed that the management side witness by name Franklin has deposed before the Enquiry Officer that this petitioner was absent for 27 days as detailed below:

June 2013	03, 4, 20 and 24.
July 2013	05, 10 and 11.
August 2013	08, 17, 18 and 28.
September 2013	02, 05, 09, 10, 13 and 14.
October 2013	05, 07, 10, 19 and 21.
December 2013	06, 07, 18, 19 and 24.
Total	27 days.

17. Further, this petitioner has deposed that as per the charge sheet (Ex.P1) he has been shown as absent for 32 days as follows:

June 2013	03, 04, 07, 10, 12, 13, 14, 20, 24 and 28.
July 2013	05, 10 and 11.
August 2013	08, 17 and 28.
September 2013	02, 05, 09, 10, 13 and 14.
October 2013	05, 07, 10, 19 and 21.
December 2013	06, 07, 18, 19 and 24.
Total	32 days.

18. Further, the petitioner has deposed that the non-examination of Mr. Allane was also fatal to the management and the Enquiry Officer has failed to consider the same. From and the out of the abovesaid evidences, the petitioner side Counsel has argued that the charges were vague and the evidences between RW.1 to RW.3 were totally contra to each other and the non-examination of Mr. Allane was paucity to the management, even then the Enquiry Officer has concluded the enquiry in favour of the management and therefore, it has to be rejected in total. *Per contra*, the respondent side Counsel argued that the inadequacy of the evidences before the Enquiry Officer cannot be weighed by this Court at this stage, and this Court cannot act as an appellate authority of the Enquiry Officer and therefore, he has requested to reject the argument advanced on the petitioner side. At this juncture, this Court inclined to go through the judgment rendered by the Hon'ble Supreme Court reported in AIR 1996 Supreme Court 2474 in the Civil Appeal No. 9229/1996 in the case of

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19. *Wherein, the paragraph Nos. 2, 3 and 4 runs as follows:*

"Thiru. K.V. Perumal was a Deputy Registrar of the Co-operative Societies under the Government of Tamil Nadu. He was suspended pending enquiry into certain charges which are set out in the memo of charges dated November 3, 1987. There are two charges and in support of each charges supporting material and particulars are elaborately set out. The respondent did not furnish a reply to the memo of charges. By an application, dated September 23, 1988, he asked for perusal of certain "records and files" which according to him were quite essential for the purpose of preparing the statement defence by him. He seems to have addressed certain further representations to the same effect. On September 26, 1989, the Registrar of Co-operative Societies (who had served the memo of charges to whom the respondent had made representation for supply of documents) wrote to the respondent asking him to specify how the records asked for by him were relevant to the charges framed. He also stated that his duty is to supply only those documents which are relevant to the charges and not each and every document asked for by the respondent. It appears that the respondent did not comply with the said letter of the Registrar. The Enquiry Officer appointed by the Registrar sent notices to the respondent to attend the enquiry, but, the respondent declined to do so.

The Enquiry Officer thereupon perused the records and submitted a report holding both the charges as established. A copy of the Enquiry Officer's report was communicated to the respondent who submitted a detailed representation. The Tamil Nadu Public Service Commissions which was consulted in the matters recommended the removal of the respondent. On September 22 1991 the respondent was served with orders removing him from the service. (As a matter of fact, he was to retired from service on September 30, 1991) A Review Petition filed by the respondent was rejected by the Government whereupon he approached the Tamil Nadu Tribunal by way of O.A. No. 1) 1053 of 1992. The Tribunal allowed the respondent's O.A, set aside the order of removal and directed that the respondent be treated as on medical leave, to which he is eligibles, during the period of suspension and that he shall also be entitled to all benefits under the rules".

20. "The Tribunal has allowed the O.A on four grounds viz., (1) that the charges are vague; (2) that the appointment of Enquiry Officer was itself illegal in as much as the person appointed as Enquiry Officer was himself a witness against the respondent; (3) the failure to supply the documents asked for by the respondent amounts to violation of the principles of natural justice and; (4) the charges levelled against the respondent cannot be said to have been established on the material before the Enquiry Officer/Disciplinary Authority".

21. "After hearing the Counsel for the parties we find that grounds 1, 2 and 4 are unsustainable in law and on facts of the case. We need not deal with grounds 1 and 2 in as much as Shri Venkatramani, learned Counsel for the respondent, did not seek to support to the said grounds. Be that as it may, we have perused the memo of charges and we do not find any vagueness in the charges. Similarly, the second ground given by the Tribunal appears to be based upon a mistake as to the identity of the person appointed as the Enquiry Officer. So far as, the fourth ground is concerned it has been repeatedly held by this Court that it is not the province of the Tribunal to go into the truth or otherwise of the charges and that the Tribunal is not an appellate authority over the departmental authorities. Accordingly, the Tribunal must be held to have exceeded its jurisdiction in entering upon a discussion whether, the charges are established on the material available. The fourth ground also thus disappears. Now, remains only the third ground viz., the non-furnishing of the documents asked for by the respondent. The Tribunal seems to be under the impression that the Enquiry Officer/Disciplinary Authority is bound to supply each and every document that may be asked for by the Delinquent Officer/Employee. It is wrong there. Their

duty is only to supply relevant document and not each and every document asked for by the Delinquent Officer/Employee. In this case, the respondent had asked for certain documents. The Registrar, to whom the request was made, called upon him to specify the relevance of each and every document asked for by him. It is not brought to our notice that the respondent did so. The Tribunal too has not gone into the question nor has it expressed any opinion whether, the documents asked for were indeed relevant and whether their non-supply has prejudiced the respondent's case. The test to be applied in this behalf has been set out by this Court in *State Bank of Patiala v. S.K. Sharma*, 1996 (3) Scale 202: (1996 AIR SCW 1740). It was the duty of the respondent to point out how each and every document was relevant to the charges or to the enquiry being held against him and whether, and how their non-supply has prejudiced his case. Equally, it is the duty of the Tribunal to record a finding whether, any relevant documents were not supplied and whether such on-supply has prejudiced the defendant's case. Since, this has not been done by the Tribunal in this matter, it has to go back for a rehearing".

22. Furthermore, as per judgment, rendered by the Hon'ble Supreme Court in the case of

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Rajapandian

Reported in 1995 1 LLJ Supreme Court 953

Wherein the paragraph Nos. 8, 9 and 10 runs as follows:

"We have quoted above three paragraphs from the impugned order of the Administrative Tribunal to show that the Tribunal reappreciated the evidence recorded before the inquiring authority. The Administrative Tribunal reached different conclusions from the inquiring authority on its own evaluation of the evidence. The Tribunal fell into patent error and acted wholly beyond its jurisdiction. It is not necessary for us to go into the merits of appreciation of evidence by the two authorities because we are of the view that the Administrative Tribunal had no jurisdiction to sit as an appellate authority over the findings of the inquiring authority".

23. This Court in *Union of India v. Sardar Bahadur* (1972-I-LLJ-1), held as under: P.6

"A Disciplinary proceeding is not a Criminal Trial. The standard of proof required is that of preponderance of probability and not proof beyond

reasonable doubt. If, the inference that Nand Kumar was a person likely to have official dealings, with the respondent was one which reasonable person would draw from the proved facts of the case, the High Court cannot sit as a Court of appeal over a decision based on it. Where, there are some relevant materials which the authority has accepted and which material may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials. If, the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court".

24. In *Union of India v. Parma Nanda* (1989-II-LLJ-57), this Court observed as under : pp (64-65)

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where, they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a Delinquent Officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If, there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If, the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority".

25. From and out of the abovesaid citations, it is clear that the Tribunal cannot reappreciate the findings recorded by the Enquiry Officer/Authority and reach different conclusions on its own evaluation of evidence. In the above reported citation, the Administrative Tribunal acted as appellate authority over the finding of inquiry authority, and so, it is held that "the Tribunal must be held to have exceeded its jurisdiction in entering upon a discussion whether the charges are established on the materials available". It shows that the Tribunal is not having power to interfere with the findings of the Enquiry Officer, and if, it was done, then it will amount to exceeding of its jurisdiction by the Tribunal. Therefore, this Court is not empowered to have discussion over the finding given by the Enquiry Officer as it was not in perverse or against the principles

of natural justice. At this juncture, this Court inclined to go through the judgment rendered by the Hon'ble Madhya Pradesh High Court, Jabalpur in the appeal No. 780/2016 in *R.K. Solangi Vs. Central Bank of India*, wherein, Para 9 page No. 3, para 16 in page No. 4, para 13 in page No. 5 runs as follows:

“The scope of departmental inquiry and criminal cases have been considered by the Apex Court in number of cases. The said issue is no longer res Integra. In *B.C. Chaturvedi Vs. Union of India* (1995) 6 SCC 749 the Supreme Court has held as under:

“12. Judicial review is not an appeal from a decision but, a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a Competent Officer or whether, rules of natural justice are complied with. Whether, the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But, that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority is entitled to hold that the Delinquent Officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not Act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where, the authority held the proceedings against the Delinquent Officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If, the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with, the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case, emphasis supplied”.

26. “Before adverting to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the Court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If, there is some evidence to

reasonably support the conclusion of the inquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings”.

27. “As per the principles laid down in the aforesaid cases, it is clear that interference can be made against the findings of Inquiry Officer and other authorities, provided findings are perverse or it is a case of no evidence. If there is some evidence to support the conclusion of Inquiring Authority, no interference can be made. Adequacy of evidence cannot be subject matter of judicial review”.

28. As per the abovesaid judgment, the Tribunal can interfere with the findings of the Enquiry Officer provided it is perverse or it is the case of no evidence. If, there is some evidence to support the conclusion of Enquiry Authority no interference can be made. Adequacy of evidence cannot be a subject matter of judicial review. It is also held that the Tribunal has no jurisdiction to reverse the finding of the Enquiry Officer on the ground that the evidence adduced before the Enquiry Officer is insufficient and it is also held that, it is not the function of the Tribunal to review the evidence and to arrive its own independent findings. The Enquiry Authorities were sole judge of the fact, so long as, there is some legal evidences to substantiate the findings and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Tribunal. Therefore, on the basis of the abovesaid citations the inadequacy or the paucity of evidence cannot be considered by this Tribunal and therefore, the argument put forth by the petitioner side Counsel cannot be taken into consideration.

29. Just for the argument sake, this Tribunal goes through the Enquiry Officer report Ex.R17. Here, in this case, the Enquiry Officer has given his report after giving sufficient opportunity to this petitioner. He has supplied the copies of the documents to this petitioner. He has permitted this petitioner, to have his cross-examination. He heard the argument advanced by this petitioner, and finally he has given finding/report and it was marked as Ex.R17, wherein, the Enquiry Officer has clearly stated the valid reasons for his conclusion in page 15 to 17 as follows:

நி.சா.3-ன் இச்சாட்சியத்தை உறுதி செய்யும் வகையில் நி.சா.1-திரு. T. கலைசெல்வன், கால அலுவலக பொறுப்பாளர் தனது சாட்சியத்தில், ஏப்ரல் 2014-ல் 21-03-2014 முதல் 15-04-2014 தேதி வரையிலான Attendance Details

(நி.சா.ஆ.5) அனுப்பியபோது. அதை பார்த்த Extruder Area Incharge திரு. பிரான்சின் விஜய் (நி.சா.3) தன்னை தொடர்பு கொண்டு. அவரது கண்காணிப்பில் பணிபுரியும் மேற்பார்வையாளர் திரு. J. ஆலன் (J. Allane) Emp.No. 607009 என்பவர் 09-04-2014 மற்றும் 10-04-2014 ஆகிய தினங்களில் பணிக்கு வரவில்லை என்றும், ஆனால், அன்று அவர் பணிக்கு வந்ததாக Entry உள்ளது என்றும் தன்னிடம் தெரிவித்ததாகவும், இரண்டு தேதிகளிலும் திரு. ஆலன் அவர்களின் Punch-In மற்றும் Punch-out இருந்தால் அவருக்கு SAP-ல் இரண்டு தேதிகளிலும் Attendance Update ஆகியிருக்கும் என்று தான் கூறியதாகவும், சிறிது நேரம் கழித்து நி.சா.3 தன்னிடம் வந்து Extruder பிரிவில் பணிபுரியும் திரு. முத்துக்குமாரசாமி அவர்களின் Punching details-களை மேற்கூறிய தேதிகளுக்கு சரிபார்த்து கூறுமாறு கேட்டதாகவும் 09-04-2014 மற்றும் 10-04-2014 ஆகிய தேதிகளுக்கு தான் திரு. முத்துக்குமாரசாமியின் Punching details-களை SAP-ல் சரிபார்த்தபோது திரு. ஆலன் பன்ச்சிங் நேரமும் (Punching In and Out) திரு. முத்துக்குமாரசாமியின் In and Out Punching நேரமும் ஒன்றாக இருந்தது என்றும் (நி.சா.ஆ.6 மற்றும் நி.சா.ஆ.7), ஒரே மெஷினில் இரண்டு Punch செய்யப்பட்டிருந்தது என்றும் அதாவது Extruder நுழைவு வாயில் அருகில் உள்ள 7-வது மெஷினில் In-Punch-ம், Extruder நுழைவு வாயிலில் உள்ள 8-வது மெஷினில் Out Punch-ம் செய்யப்பட்டிருந்தது என்றும், இதிலிருந்து திரு. ஆலன் அவர்கள் பணிக்கு வராத நாட்களில் அவரது கார்டை திரு. முத்துக்குமாரசாமி பஞ்ச் செய்துள்ளார் என்பது தெரியவந்ததாகவும், அதேபோல் 23-04-2014 அன்று திரு. ஆலன் அவர்களிடம் தான் மற்றும் மனிதவளத்துறை அதிகாரிகள் இதுபற்றி விசாரித்தபோது. திரு. ஆலன் அவர்கள் மேற்கூறிய தேதிகளில் தான் பணிக்கு வரவில்லை என்றும், தன்னுடைய பஞ்ச் கார்டை திரு. முத்துக்குமாரசாமி அவர்களிடம் கொடுத்து மேற்கூறிய தேதிகளில் பஞ்ச் செய்யுமாறு கோரியதாக கூறி ஒப்புக்கொண்டதாகவும் கூறியுள்ளார். திரு. ஆலன் அளித்துள்ள நி.சா.ஆ.17 ஒப்புதல் கடிதம் இதை தெளிவுபடுத்துகிறது. மேலும், நி.சா.1 தனது குறுக்கு விசாரணை பதிலில் 09-04-2014 மற்றும் 10-04-2014 ஆகிய தேதிகளில் திரு. ஆலன் மற்றும் திரு. முத்துக்குமாரசாமி பஞ்ச் செய்த நேரங்களில் வித்யாசம் இல்லை என்றும், திரு. முத்துக்குமாரசாமி அவர்களுக்கு முன்பாக பஞ்ச் செய்தவரோ அல்லது அவருக்கு பின்னர் பஞ்ச் செய்தவரோ திரு. ஆலனின் கார்டை பஞ்ச் செய்திருக்க வாய்ப்பில்லை என்றும், ஏனென்றால் அந்த இருநாளும் இரு வேலைகளிலும் இரண்டு கார்டுகளும் ஒரே நேரத்தில் அடுத்தடுத்து பஞ்ச் செய்யப்பட்டுள்ளன என்றும், ஒருவரே இருகார்டுகளை அடிக்க முடியும் என்றும், ஒன்றின்பின் ஒன்றாகவும் அல்லது இருகார்டுகளையும் சேர்த்து வைத்து அடிக்க முடியும் என்றும் ஸ்திரமாக கூறி தனது முதன்மை சாட்சியத்தை நி.சா.1 ஊர்ஜிதம் செய்துள்ளார். இது தொடர்பாக நி.சா.ஆ.6 முதல் நி.சா.ஆ.11 வரையிலான ஆவணங்களை ஆராய்ந்ததில் திரு. முத்துக்குமாரசாமி மற்றும் திரு. ஆலன்

ஆகிய இருவருக்குமே மேற்குறிப்பிட்ட இரு தேதிகளிலுமே ஒரே நேரத்தில் ஒரே இயந்திரத்தில் உள் மற்றும் வெளியேற்ற அட்டைகள் பஞ்ச் செய்யப்பட்டிருப்பது ஊர்ஜிதமாகிறது.

30. மேலும், நி.சா.3 தனது சாட்சியத்தில் திரு. முத்துக்குமாரசாமி அவர்களின் வருகைகளையும் Work Sheet Entry-களையும் எடுத்து Compare செய்து தெரிவிக்குமாறு Production Supervisor-களிடம் தான் கேட்டுக்கொண்டதாகவும், அதில் கீழ்க்கண்ட நாட்களில் திரு. முத்துக்குமாரசாமி பணிக்கு வராதிருந்தும் அவருக்கு 6008 Cost Center-ல் Work Sheet பதிவாகியிருந்தது தெரியவந்தது என்றும் நி.சா.3 கூறியுள்ளார். அத்தேதிகள் பின்வருமாறு :

ஜூன் 2013 மாதம், 3, 4, 20 மற்றும் 24 தேதிகள்

ஜூலை 2013 மாதம், 5, 10, 11 தேதிகள்

ஆகஸ்ட் 2013 மாதம், 8, 17, 18 மற்றும் 28 தேதிகள்

செப்டம்பர் 2013 மாதம், 2, 5, 9, 10, 13 மற்றும் 14 தேதிகள்

அக்டோபர் 2013 மாதம், 5, 7, 10, 19 மற்றும் 21 தேதிகள்

டிசம்பர் 2013 மாதம், 6, 7, 18, 19 மற்றும் 24 தேதிகள்

31. நி.சா.3-ன் இந்த குறிப்பிட்ட சாட்சியம் நி.சா.ஆ.18 முதல் நி.சா.ஆ.20 வரையிலான ஆவணங்களை ஆராய்ந்ததில் அவற்றுடன் ஒத்துப்போகிறது. மேலும், நி.சா.3 தனது சாட்சியத்தில் மேற்கூறிய தேதிகளில் Cross Verify செய்ததில் எல்லாமே Attendance-ல் Absent, ஆனால் Work Sheet 6008 Cost Center-ல் பதிவாகியிருந்தது என்றும், மேலும், திரு. முத்துக்குமாரசாமி அவர்களது Pay Slip-களை (நி.சா.ஆ.21) Verify செய்தபோது மேற்கூறிய நாட்களில் அவர் பணிக்கு வராதிருந்தபோதும் அவற்றிக்கு ஊதியம் பெற்றுள்ளதும் தெரியவந்துள்ளது என்றும், மேலும், 17-12-2013 தேதியில் “B” ஷிப்டில் திரு. முத்துக்குமாரசாமி ஆஜராகி, பின்னர் சொந்த காரணங்களுக்காக மாலை 6.00 மணிக்கு Out-Pass (நி.சா.ஆ.22) வாங்கி வெளியே சென்றுவிட்டதாகவும், ஆனால், அன்றைய தினமும் அவருக்கு 6008 cost Center-ல் 4.45 hrs. பணி செய்ததாக Work Sheet Entry பதிவு செய்யப்பட்டிருந்தது என்றும், “B” ஷிப்டு மதியம் 2.45 மணி முதல் இரவு 10.45 மணி வரை என்றும், கால அலுவலகத்தில் உள்ள விபரங்கள் மற்றும் திரு. ஆலன் தந்த வாக்குமூலம் ஆகியவற்றில் வாயிலாக திரு. ஆலன் பணிக்கு வராத நாட்களுக்கு திரு. முத்துக்குமாரசாமி அவரது பஞ்ச் கார்டை அடித்துள்ளார் என்பதை உறுதி செய்தார்கள் என்றும் விரிவாக கூறியுள்ளார். நி.சா.ஆ.22-ஐ பரிசீலித்ததில் மதியம் 2.45 மணி முதல் இரவு 10.45 மணி வரையிலான ஷிப்டில் 17-12-2013 அன்று மாலை 6.00 மணிக்கு திரு. முத்துக்குமாரசாமி தொழிற்சாலையை விட்டு வெளியேறியுள்ளார். ஆனால், நி.சா.ஆ.18-ல் அவரது பணியிடமான General Extruder-ல் உண்மையாக பணி செய்த நேரமான “3.25” மணி நேரம் குறிப்பிடப்பட்டுள்ளதோடு, அவர் தொழிற்சாலையை விட்டு அன்று மாலை 6.00 மணி முதல் ஷிப்டு இறுதி நேரம் இரவு

10.45 மணி வரையிலான காலத்திற்கு நி.சா.3 கூறியுள்ளது போல் “4.75” மணி நேரம் பணி செய்தததை போல் போலியாக Salvage பிரிவில் வொர்க் ஷீட் பதிவு செய்யப்பட்டுள்ளது. மேலும், நி.சா.ஆ.21 திரு. முத்துக்குமாரசாமி அவர்களின் ஊதிய தாள்கள் ஆராய்ந்ததில் நி.சா.3 தனது சாட்சியத்தில் கூறியுள்ளபடி திரு. முத்துக்குமாரசாமி பணிக்கு வராத மேற்குறிப்பிட்ட நாட்களுக்கும் ஊதியம் பெற்றிருப்பது புலனாகிறது.

32. இந்த இவரது (நி.சா.3) சாட்சியத்தை மேலும் உறுதி செய்யும் வகையில் நி.சா.2 திரு. செந்தில்குமார், ஷிப்டு மேற்பார்வையாளர், Extruder பிரிவு அவர்கள் தனது சாட்சியத்தில் தனது Area Incharge ஆகிய நி.சா.3 தன்னிடம் கேட்டுக்கொண்டதன் பேரில் ஜூலை 2013 முதல் டிசம்பர் 2013 வரையிலான காலங்களில் தான் ஷிப்ட் மேற்பார்வையாளராக பணியில் இருந்த நாட்களில் திரு. முத்துக்குமாரசாமி தொடர்பான ஷிப்ட் ஷெட்யூல் மற்றும் Work Sheet Entry ஆகியவற்றை சரிபார்த்ததில் ஜூலை 2013, 10 மற்றும் 11 தேதிகள், 21-10-2013, 06-12-2013 மற்றும் 07-12-2013 ஆகிய நாட்களில் ஷிப்ட் ஷெட்யூலில் திரு. முத்துக்குமாரசாமி பணிக்கு வராதது குறிப்பிடப்பட்டிருந்தது என்றும், இந்த நாட்களில் திரு. முத்துக்குமாரசாமி பணிக்கு வராததால்தான் அவருக்கு Work Sheet Entry செய்யவில்லை என்றும், மேலும், 6008 என்ற Cost Center-ல் (Salvaging துறை) மேற்குறிப்பிட்ட நாட்களில் Work Sheet Entry செய்யப்பட்டுள்ளதை கண்டு அது பற்றி தான் தனது மேலதிகாரி நி.சா.3-க்கு தெரியப்படுத்தியதாகவும் கூறியுள்ளார். இந்த இவரது சாட்சியமும் நி.சா.ஆ.18 முதல் 20 வரையிலான ஆவணங்களில் உள்ள பிதிவுகளோடு ஒத்துப்போகின்றன.

33. மேலும், மேற்குறிப்பிட்ட நிர்வாகத்தரப்பின் மூன்று சாட்சிகளின் இப்பகுதி சாட்சியங்களை திரு. முத்துக்குமாரசாமி அவர்களால் ஏதும் தெளிவாக மறுத்துக்கூறி தனக்கு சாதகமாக ஏதும் கொண்டு வர இயலவில்லை. இவை குறித்து நிர்வாகத்தரப்பில் தாக்கல் செய்யப்பட்ட ஆவணங்களையும் அவரால் ஏதும் மறுத்துக்கூற இயலவில்லை. ஆகவே, மேலே விவரிக்கப்பட்டுள்ள நிர்வாகத்தரப்பு சாட்சிகளின் சாட்சியங்கள் வாயிலாக நி.சா.3 தனது சாட்சியத்தில் தெளிவுபடுத்தியுள்ள நாட்களில் திரு. முத்துக்குமாரசாமி அவர்களின் நிர்ப்பந்தத்தின் பேரிலேயே உற்பத்தித் துறை மேற்பார்வையாளர் திரு. ஆலன், திரு. முத்துக்குமாரசாமி பணிக்கு வராத நாட்களுக்கும் வொர்க் ஷீட் பதிவு செய்து ஊதியம் பெற வழிவகுத்துள்ளார் என்பதும், அதற்கு கைமாறாக திரு. ஆலன், உற்பத்தித் துறை மேற்பார்வையாளர் அவர்கள் பணிக்கு வராத 09-04-2014 மற்றும் 10-04-2014 ஆகிய நாட்களில் அவருடைய பன்ச் கார்டை திரு. முத்துக்குமாரசாமி பன்சிங் செய்து அவருடைய வருகையை முறைகேடாக பதிவு செய்துள்ளார் என்பதும் விசாரணையில் தெளிவாக ஊர்ஜிதமாகிறது. மேலும், இவை தொடர்பாக நிர்வாகத்தரப்பில் தாக்கல் செய்யப்பட்ட ஆவணங்களை கூர்ந்து பரிசீலித்ததில் அவையும் திரு. முத்துக்குமாரசாமி மீதான குற்றச்சாட்டுகளை மேலும் ஊர்ஜிதம் செய்துள்ளது. மேலே ஏற்கனவே காரணங்களோடு விளக்கப்பட்டுள்ளன.

34. நிர்வாகத்தரப்பின் மேற்கூறிய மூன்று சாட்சிகளின் சாட்சியங்களும் ஒன்றுக்கொன்று தொடர்புடையதாகவும், கோர்வையாகவும், ஒன்றோடு ஒன்று ஒத்துப்போகவும் செய்கின்றன. மூன்று சாட்சிகளுமே நடைமுறைகளையும், சம்பவங்களையும், சூழ்நிலைகளையும் தெளிவுபடுத்தி எடுத்ததுக் கூறியுள்ளனர். மேலும், இம்மூன்று நிர்வாகத்தரப்பு சாட்சிகளின் சாட்சியங்களும் அவரவர் புகார் கடிதங்களில் உள்ள புகாரும் (முறையே நி.சா.ஆ.4, நி.சா.ஆ.12 மற்றும் நி.சா.ஆ.13) ஒன்றோடு ஒன்று ஒத்து போவதோடு மட்டும் அல்லாமல், காரணம் கோரும் கடிதத்தோடும் (நி.சா.ஆ.1), நிர்வாகத்தரப்பில் தாக்கல் செய்யப்பட்டுள்ள மற்ற ஆவணங்களோடும் (குறிப்பாக நி.சா.ஆ.5 முதல் நி.சா.ஆ.11 வரை மற்றும் நி.சா.ஆ.15 முதல் நி.சா.ஆ.21 வரை) தெளிவாக ஒத்துப்போகிறது. நி.சா.ஆ.17 முதல் நி.சா.ஆ.21 வரையிலான ஆவணங்கள் வாயிலாக திரு. முத்துக்குமாரசாமி, திரு. ஆலன் உதவியோடு தான் பணிக்கு வராத நாட்களுக்கும் வொர்க் ஷீட் பதிவு செய்யப்பெற்று ஊதியம் பெற்றுள்ளோம், அதற்கு கைமாறாக திரு. ஆலன் பணிக்கு வராத 09-04-2014 மற்றும் 10-04-2014 ஆகிய இரு நாட்களுக்கு அவருடைய பன்ச் கார்டை திரு. முத்துக்குமாரசாமி முறைகேடாக பதிவு செய்துள்ளதும் விசாரணையில் தெளிவாக நிரூபிக்கப்பட்டுள்ளது.

35. ஆகவே, நிர்வாகத்தரப்பு சாட்சியங்கள் மற்றும் விசாரணையில் தாக்கல் செய்யப்பட்ட ஆவணங்களை கவனமாக ஆராய்ந்ததிலும், நிர்வாகத் தரப்பு சாட்சிகள் நடந்த சம்பவங்களையும், சூழ்நிலைகளையும், காரணங்களையும் தெளிவாக விசாரணையில் தெளிவு படுத்தியுள்ள நிலையில், திரு. முத்துக்குமாரசாமி மீதான குற்றச்சாட்டுகள் உண்மையானது தான் என்பதற்கு சந்தேகம் அற அனைத்து சாத்தியக்கூறுகளும் உள்ளது. மேலும், தொழிலாளியின் விளக்கக் கடிதம் மற்றும் அவரது எழுத்து மூல வாதத்தை கவனமாக ஆராய்ந்ததில், அவற்றில் அவர் குற்றச்சாட்டுகளை பொதுவாக மறுத்துள்ளாரே தவிர, சரியான விளக்கம் ஏதும் தர இயலவில்லை. மேலும், அவற்றில் அவர் எழுப்பியுள்ள வாதங்கள் ஆதாரமுடையதாகவோ அல்லது திருப்திகரமாகவோ ஏதும் இல்லை. ஆகவே, அவர் எழுப்பியுள்ள வாதங்கள் அவரை குற்றச்சாட்டிலிருந்து விடுவிக்கக்கூடியதாகவும் அமையவில்லை. மேலும், நிர்வாகத்தரப்பில் தாக்கல் செய்யப்பட்டுள்ள ஆவணங்களை திரு. முத்துக்குமாரசாமி ஏதும் மறுத்துக்கூறவில்லை மற்றும் மறுத்துக்கூறவும் இயலவில்லை என்பதும், அவைபற்றி அவர் கருத்துக்களையும் தெரிவிக்க இயலவில்லை என்பதும் குறிப்பிடத்தக்கது.

36. It speaks in volume that the Enquiry Officer has given his findings on the basis of evidences of RW.1 to RW.3 and on the basis of the document marked on the side of the management. It shows that the Enquiry Officer has given his report based legal evidence and not on “No evidence”. Hence, this Tribunal comes to the conclusion that there was not perversity or violation of natural principles of justice by the Enquiry Officer in the Enquiry proceedings and therefore, it is held that it is not necessary to interfere with the finding of the Enquiry Officer report.

37. The next point for consideration is whether the order of termination is proportionate or not? In this regard, the petitioner side Counsel filed a citation reported in 2010 LLR 744 by the Hon'ble Bombay High Court, wherein, it is held that the dismissal of the watchman who mishandled and became violent towards his superior, has not been disproportionate to the misconduct and therefore, there is no warrant for interference of the order of the Labour Court. The petitioner side Counsel filed another citation reported in 2005 (2)CTC 730 by Hon'ble Madras High Court, wherein, the Hon'ble High Court has held that dismissal from service for unauthorized absent is proportionate and it is not disproportionate. Further, the petitioner side Counsel has filed another citation reported in 2001 LLR 1213 by Patna High Court, wherein, the Hon'ble High Court has held that dismissal of the Assistant Manager is not illegal for the misconduct of various act of omission and commission as mentioned in the charge sheet. Here, in this case also this petitioner was absent for 32 days as per Ex.P1, during his tenure in the respondent factory from June 2013 to December 2013, for that period he has made worksheet entries through his colleague by name Mr. Allane in the working sheet in SAP 6008, and for that period also he has received his salary. Further, this petitioner has made proxy entries to Mr. Allane for the dates 09-04-2014 and 10-04-2014. All these facts were proved by the management before the Enquiry Officer by examining three management side witnesses, namely, Kalaiselvan, Franklin Vijay and Rajadurai. To substantiate their evidences the management has produce as many as 22 documents before the Enquiry Officer. The enquiry report was also infavour of the management, which would goes to shows that this petitioner indulged in making proxy entries and also gained unlawful advantages through his colleague by receiving salary for his absent period. Since, the abovesaid act of misconduct is serious and grave, the punishment imposed upon the petitioner found to be justifiable and proportionate one. Further, the respondent side Counsel filed the citations reported in 2001 LLR 401 (Madhya Pradesh High Court), 2001 LLR 1154 SC and 2001 LLR 1237 Kerala High Court, and thereby he argued that the management has loss its confidants against this petitioner and therefor no leniency was granted or shown in favour of this petitioner. As per the citations mentioned in 2011 LLR 401, causing monetary loss to the corporation is held as serious one. Further, in the abovesaid judgment it is held that if dishonest person are allowed to continue in corporation it may cause monetary loss to the corporation and in such circumstances, leniency is not permissible. Here, in this case also, this petitioner has gained unlawful

advantages by receiving salary for his absent period and thereby caused monetary loss to the respondent company. Furthermore, he has made proxy entries for Mr. Allane and thereby acted as a tool for unlawful gain for Mr. Allane and thereby he has caused monetary loss to the respondent company. All these things would goes to shows that leniency is not permissible in this case. Hence, this Tribunal comes to the conclusion that the order of dismissal of this petitioner from the service is in accordance with law and the punishment of termination is also proportionate one.

38. Now, the last point for consideration: Whether, this petitioner is entitle for reinstatement with all monetary benefits?

39. As per the above discussions this petitioner was removed from his service in accordance with law for his proven misconduct. Therefore, this Court come to the conclusion that he was not entitle for reinstatement with all monetary benefits as he claimed in this petition.

40. In the result, the order of dismissal by the management is decided as justifiable and the industrial dispute raised by the petitioner, against the management is decided as unjustified and hence, this Industrial Dispute is dismissed. No cost.

Dictated to Stenographer, transcribed by him, corrected and pronounced by me in the Open Court on this the 9th day of December, 2019.

V. PANDIARAJ,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.

List of petitioner's witness:

PW.1 — 20-09-2017 A. Muthukumarasamy

List of petitioner's exhibits:

Ex.P1	— 28-04-2014	Copy of show cause notice issued to the claim petitioner.
Ex.P2	— 30-04-2014	Copy of written explanation of the claim petitioner.
Ex.P3	— 17-09-2014	Copy of second show cause notice issued to the claim petitioner.
Ex.P4	— 20-05-2014	Copy of requisition letter given by the petitioner to the Conciliation Officer for appointing a Counsel on behalf of the petitioner.

Ex.P5	— 20-05-2014	Copy of requisition filed by the petitioner for obtaining copy of the complaint.
Ex.P6	— 05-01-2015	Copy of the termination from service of the claim petitioner.
Ex.P7	—	Letter to the Conciliation Officer raising industrial dispute by the petitioner.

List of respondent's witness:

RW.1	— 21-03-2018	Kalaiselvan
RW.2	— 09-01-2019	Franklin Vijay
RW.3	— 10-04-2019	Rajadurai

List of respondent's exhibits:

Ex.R1	— 06-05-2014	Copy of the notice of enquiry.
Ex.R2	— 09-05-2014 — 01-07-2014	Copy of the Enquiry proceedings against the claim petitioner.
Ex.R3	—	Petitioner's signature found in the enquiry proceedings.
Ex.R4	— 28-04-2014	Copy of the show cause notice issued to the claim petitioner.
Ex.R5	— 30-04-2014	Copy the written explanation of claim petitioner.
Ex.R6	— 17-12-2013	Copy of factory outpass of the claim petitioner.
Ex.R7	—	Copy of punching entry details of the claim petitioner and J. Allane.
Ex.R8	—	Copy of attendance details from 21-03-2014 to 15-04-2014.
Ex.R9	— 23-04-2014	Copy of letter of J. Allane.
Ex.R10	— 25-04-2014	Copy of complaint received from the time office as against the claim petitioner.
Ex.R11	— 22-04-2014	Copy of show cause notice issued to Mr. J. Allane.
Ex.R12	— 22-04-2014	Copy of reply of show cause notice by Mr. J. Allane.
Ex.R13	— 23-04-2014	Copy of resignation letter by Mr. J. Allane.

Ex.R14	— 22-05-2014	Copy of resignation letter by Mr. J. Allane.
Ex.R15	— 23-04-2014	Copy of the complaint letter of M. Franklin Vijay.
Ex.R16	— 25-04-2014	Copy of the complaint letter of J. Senthil Kumar.
Ex.R17	— 04-08-2014	Copy of the enquiry report of the claim petitioner.
Ex.R18	— 17-09-2014	Copy of the second show cause notice issued to the claim petitioner.
Ex.R19	— 22-12-2003	Copy of the severe warning letter issued to the claim petitioner.
Ex.R20	— 03-01-2004	Copy of the warning letter issued to the claim petitioner.
Ex.R21	— 14-03-2005	Copy of the advice letter issued to the claim petitioner.
Ex.R22	— 20-11-2003	Copy of the warning letter issued to the claim petitioner.
Ex.R23	—	Copy of the attendance details (worksheet and punch entry) of the claim petitioner from June 2013 to December 2013.
Ex.R24	—	Copy of the salary slip of the claim petitioner from June 2013 to December 2013.
Ex.R25	—	Copy of Lave Card of the claim petitioner.
Ex.R26	— 04-10-2014	Copy of explanation of the Claim petitioner.
Ex.R27	— 05-01-2015	Copy of the termination from service of the claim petitioner.
Ex.R28	— 12-01-2015	Copy of the representation of the claim petitioner to the Labour Officer (Conciliation), Puducherry.
Ex.R29	—	Copy of the reply of the respondent management to the Labour Officer (Conciliation), Puducherry.

V. PANDIARAJ,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Puducherry.